

REMARKS

This Amendment is responsive to the Office Action dated June 25, 2004. Claims 1-13 and 16-72 were pending in the application. In the Office Action, claims 1-4, 8-13, 16, 17, 26-31, 35-41, 45-56, 60-66 and 70-72 were rejected, and claims 5-7, 22-24, 32-34, 42-44, 57-59 and 67-69 were objected to. In this Amendment, claims 1, 9, 10, 13, 16-18 and 26 have been amended. Claims 1-13 and 16-72 thus remain for consideration

Applicants submit that claims 1-13 and 16-72 are in condition for allowance and request reconsideration and withdrawal of the rejections in light of the following remarks.

Double Patenting

Claims 1-4, 8-13, 16, 17, 26-31, 35-41, 45-56, 60-66 and 70-72 were rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-4 of U.S. Patent No. 6,256,391.

Applicants submit that claims 1-4, 8-13, 16, 17, 26-31, 35-41, 45-56, 60-66 and 70-72 of the present application do not claim the same invention as claims 1-4 of U.S. Patent No. 6,256,391. In this regard Applicants note that claims 1-4, 8-13, 16, 17, 26-31, 35-41, 45-56, 60-66 and 70-72 differ from claims 1-4 of U.S. Patent No. 6,256,391 in at least the following respects.

Independent claims 1, 9, 38, 46 and 53 of the present application are directed toward an enciphering apparatus and an enciphering method. Claim 4 of the '391 patent is directed toward a deciphering apparatus, and is therefore different from claims 1, 9, 38, 46 and 53 of the present application. Claims 1-3 of the '391 patent are directed toward an information processing system and method. Each of the claims specifies a first information processing

apparatus having a function whose change is not open to a user, and a second information processing apparatus having a function whose change is open to a user. None of claims 1, 9, 38, 46 and 53 of the present application include the “open/not open” limitation of claims 1-3 of the ‘391 patent, and therefore claims 1, 9, 38, 46 and 53 differ from claims 1-3 of the ‘391 patent on at least this basis.

Independent claims 10, 13, 16, 17, 26, 47, 50-52 and 61 of the present application are directed toward a deciphering apparatus and deciphering method. Each of claims 10, 13, 16, 17, 26, 47, 50-52 and 61 differs from claims 1-3 of the ‘391 patent in that each of claims 10, 13, 16, 17, 26, 47, 50-52 and 61 does not recite a first information processing apparatus having a function whose change is not open to a user, and a second information processing apparatus having a function whose change is open to a user. Regarding claim 4 of the ‘391 patent, Applicants note that claims 10, 13, 16, 17, 26, 47, 50-52 and 61 of the present application each recite generating a cryptographic key, or keys, based on a “first information” and a “second information.” Claim 4 of the ‘391 patent includes no such recitation, and therefore claims 10, 13, 16, 17, 26, 47, 50-52 and 61 of the present application differ from claim 4 of the ‘391 patent on at least this basis.

Further, Applicants note that since dependent claims inherit the limitations of their respective base claims, the claims depending from claims 1, 9, 10, 13, 16, 17, 26, 38, 46, 47, 50-53 and 61 of the present application differ from claims 1-4 of the ‘391 patent for at least the same reasons discussed in connection with their respective base claims.

Claims 18-21, 25, 53-56 and 60 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-4 of U.S. Patent No. 6,256,391.

As noted by the Examiner, a timely filed terminal disclaimer may be used to overcome the double patenting rejections provided the conflicting application and/or patent is shown to be commonly owned with the present application.

It is not clear if the amended claims of the present application are obvious in view of claims 2-4 of U.S. Patent No. 6, 256,391. Hence, Applicants will consider the filing of a Terminal Disclaimer if the amended claims of the present application are obvious in view of U.S. Patent No. 6,256,391.

Applicants respectfully submit that all of the claims now pending in the application are in condition for allowance, which action is earnestly solicited.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner

specifically indicate those portions of the respective reference providing the basis for a contrary view.

If any issues remain, or if the Examiner has any further suggestions, he/she is invited to call the undersigned at the telephone number provided below.

The Examiner is hereby authorized to charge any insufficient fees or credit any overpayment associated with the above-identified application to Deposit Account No. 50-0320.

The Examiner's consideration of this matter is gratefully acknowledged.

Respectfully submitted,

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